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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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10 Patricia A. Meyerson, }  
11 Plaintiff, } No. CV-11-0877-PHX-PGR  
12 vs. }  
13 AMF Bowling Centers, Inc., et al., } ORDER  
14 Defendants. }  
15

16 Defendant AMF Bowling Centers, Inc. removed this “slip and fall” personal  
17 injury action on May 2, 2011 solely on the basis of diversity of citizenship  
18 jurisdiction pursuant to 28 U.S.C. § 1332. Having reviewed the defendant’s  
19 Notice of Removal to determine if subject matter jurisdiction exists in this Court,  
20 the Court finds that the Notice of Removal is facially deficient because it fails to  
21 affirmatively set forth the facts necessary for the Court to determine the existence  
22 of § 1332 jurisdiction.

23 As the Supreme Court has long since, and repeatedly, made clear,  
24 [t]he established rule is that a plaintiff [or removing defendant], suing  
25 in federal court, must show in his pleading, affirmatively and  
26 distinctly, the existence of whatever is essential to federal  
jurisdiction, and, if he does not do so, the court, on having the defect  
called to its attention or on discovering the same, must dismiss [or  
remand] the case, unless the defect be corrected by amendment.

1       Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338, 339 (1926); accord, Rilling  
 2       v. Burlington Northern Railroad Co., 909 F.2d 399, 400 (9th Cir.1990). In order to  
 3       establish subject matter jurisdiction under § 1332, the removing defendant must  
 4       demonstrate that the action is between citizens of different states and the amount  
 5       in controversy exceeds \$75,000, exclusive of interest and costs. The Court  
 6       cannot determine the existence of either element from the record before it.

7           First, the jurisdictional allegation regarding the plaintiff is deficient because  
 8       the Notice of Removal merely states that the plaintiff is “a resident of Maricopa  
 9       County, Arizona.” An allegation of residency is insufficient as a matter of law  
 10       under § 1332 because, as the Supreme Court has also repeatedly made clear,

11           [...]t has long been settled that residence and citizenship [are] wholly  
 12       different things within the meaning of the Constitution and the laws  
 13       defining and regulating the jurisdiction of the ... courts of the United  
 14       States; and that a mere averment of residence in a particular state is  
 15       not an averment of citizenship in that state for the purpose of  
 16       jurisdiction.

17       Steigleder v. McQuesten, 198 U.S. 141, 143, 25 S.Ct. 616, 617 (1905); cf.,  
 18       Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9<sup>th</sup> Cir. 2001) (Plaintiffs'  
 19       complaint ... state[s] that Plaintiffs were 'residents' of California. But the diversity  
 20       jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. ....  
 21       [The] failure to specify Plaintiffs' state of citizenship was fatal to [the] assertion of  
 22       diversity jurisdiction.”)

23           Second, the allegation in the Notice of Removal regarding the amount in  
 24       controversy is also deficient as a matter of law as it is merely an unsupported  
 25       conclusion. See Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089,  
 26       1090-91 (9<sup>th</sup> Cir.2003) (“Conclusory allegations as to the amount in controversy  
 27       are insufficient.”) While the Notice of Removal states that “Plaintiff alleges that

1 she is entitled to damages in excess of \$75,000[,]” the plaintiff’s complaint in fact  
2 makes no such allegation as it contains no allegation quantifying the plaintiff’s  
3 damages. Where, as here, the amount in controversy at the time of removal is  
4 not facially evident from the complaint, the defendant, as the removing party,  
5 bears the burden of proving by a preponderance of the evidence that the amount  
6 in controversy exceeds the jurisdictional threshold. *Id.* at 1090; Gaus v. Miles,  
7 Inc., 980 F.2d 564, 566-67 (9<sup>th</sup> Cir.1992). The defendant has failed to make any  
8 such non-speculative showing based on the submitted record. Although the  
9 defendant has attached to its Notice of Removal a copy of the plaintiff’s  
10 Certificate of Compulsory Arbitration which certifies that her action is not subject  
11 to compulsory arbitration under Arizona law, that certification is insufficient to  
12 support the amount in controversy allegation because it merely means that the  
13 plaintiff believes that her damages exceed \$50,000. See Rule 3.10(a), Local  
14 Rules of Practice of the Maricopa County Superior Court.

15 In order to cure these pleading deficiencies, the Court will require the  
16 defendant to file an amended notice of removal that affirmatively states the  
17 citizenship of each party, and affirmatively sets forth underlying facts supporting  
18 its assertion that the amount in controversy exceeds \$75,000. The defendant is  
19 advised that its failure to timely comply with this order shall result in the remand  
20 of this action without further notice for lack of subject matter jurisdiction.

21 Therefore,

22 IT IS ORDERED that defendant AMF Bowling Centers, Inc. shall file an amended  
23 notice of removal properly stating a jurisdictional basis for this action no later

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1 than **May 18, 2011.**

2 DATED this 3<sup>rd</sup> day of May, 2011.

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5 Paul G. Rosenblatt  
6 United States District Judge  
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